TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 202.

THE WESTERN UNION TELEGRAPH COMPANY, APPELLANT,

vs.

THE ANN ARBOR RAILROAD COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

FILED JANUARY 31, 1899.

(17,287.)

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1 *Transcript of Record.*

Following and subjoined are copies of the record in the case of—

THE WESTERN UNION TELEGRAPH COMPANY, Complainant,
vs.
THE ANN ARBOR RAILROAD COMPANY, Defendant.

In the Circuit Court for the County of Benzie. In Chancery.

Copy of bill of complaint. Filed Oct. 15th, '95.
Copy of injunction. Issued Oct. 15, '95. Filed Oct. 22, '95.
Copy of subpœna. Issued Oct. 15, '95. Filed Oct. 22, '95.
Copy of petition for removal. Filed Nov. 5, '95.
Copy of bond for removal. Filed No. 5, '95.
Copy of order for removal of cause. Filed Nov. 5, '95.

I hereby certify that the following are true copies of the record in the above-entitled cause now remaining on file in my office.

[Seal of the Circuit Court of Benzie County, Michigan.]

Attest: R. B. REYNOLDS,
Register Benzie County, Mich.

STATE OF MICHIGAN:

To the Circuit Court for the County of Benzie. In Chancery.

The Western Union Telegraph Company, a corporation organized and existing under the laws of the State of New York, and a citizen of the said State of New York, brings this its bill of complaint against the Ann Arbor Railroad Company, a corporation organized and existing under the laws of the State of Michigan and a citizen of said State of Michigan, and thereupon complaining says:

2 1st. That on the (25) twenty-fifth day of September, 1890, the Frankfort and South Eastern Railroad Company, a corporation organized under the laws of the State of Michigan, owned and operated a line of railway from Frankfort in the State of Michigan to the western terminus of the Toledo, Ann Arbor and North Michigan railroad near Copemish in said State of Michigan; that on said last-mentioned day, complainant entered into a contract with said Frankfort and South Eastern Railroad Company for the construction and maintenance of a telegraph line along the entire length of its said railroad, a copy of which contract is attached to this bill and made a part hereof.

2d. That in pursuance of said contract and in May, June and July, 1891, complainant built the telegraph lines provided for therein. One wire was erected for the joint use of the railroad company and complainant. A loop wire to Frankfort and back was put on the same poles for the exclusive use of complainant. From that time until October 1, 1895, both wires have been in constant use: the first by the railroad company and your orator, the last by com-

plainant exclusively. These wires constitute the only means of telegraph communication with Benzonia and Frankfort. They run from a place now called Tompsonville to Frankfort. At Tompsonville they connect with the telegraph line of complainant running north from Grand Rapids on the Chicago and West Michigan railroad.

3d. Complainant alleges on information and belief that some time in May, 1892, the said railroad of the Frankfort and South Eastern Railroad Company was sold and transferred to the Toledo, Ann Arbor and North Michigan Railway Company, a corporation organized and existing under the laws of the State of Michigan. That afterwards said last-mentioned company mortgaged their entire railroad to the Farmers' Loan and Trust Company as trustee; that said mortgage being in default a bill was filed to foreclose it September 4, 1893, in the circuit court *for* the United States for the eastern district of Michigan. Soon after Wellington R. Burt was appointed receiver. The whole road was sold under the order of the court and conveyed to said Ann Arbor Railroad Company; and said sale and conveyance have been confirmed by the order of said court. Said last-mentioned company now claims to be in possession and operating said road from Thompsonville to Frankfort, formerly known as the Frankfort and South Eastern railroad.

Your orator was not a party to said foreclosure suit.

3 4th. That said Wellington R. Burt is the president of said Ann Arbor Railroad Company, and one H. W. Ashley, of Toledo, Ohio, is its general manager. That both of these parties have long been familiar with the terms of the said contract of complainant with the Frankfort and South Eastern Railroad Company, and with the rights of complainant in the wires built on the line of said railroad, and your orator avers on information and belief, that said Ann Arbor Railroad Company purchased said road with a full knowledge of your orator's rights therein.

5th. Your orator avers that said Ann Arbor Railroad Company, acting through said Ashley, claims not to be bound by said contract made with the Frankfort and South Eastern Railroad Company, and has given your orator written notice to this effect.

6th. Your orator is now and long has been doing an extensive telegraph business in many parts of the United States. On January 7, 1867, it filed with the Postmaster General its acceptance of the provisions of the act of the United States, passed July 24, 1866.

7th. It avers that the provisions of the contract with said Frankfort and South Eastern Railroad Company are binding on said Ann Arbor Company, and that independent of said contract it has a right to maintain its telegraph line on what was formerly said Frankfort and South Eastern railroad under the provisions of the statute of the United States.

8th. On or about the first day of October, 1895, said Ann Arbor Railroad Company under the direction of its manager, said H. W. Ashley, took possession of complainant's said wires between Thompsonville and Frankfort, and cut off their connection with its other wires and deprived your orator of all telegraphic connections

with Frankfort and Benzonia. At the same time said company continued to use said wires exclusively for its own business.

9th. The value of said telegraph lines of which your orator is thus deprived is, at least, the sum of three thousand ($3,000) dollars; and the damages arising through the loss of business which will occur therefrom is large, but is incapable of accurate calculation.

10th. That on the 14th day of October, 1895, your orator reconnected the said telegraph lines running from Thompsonville to Frankfort, and so again opened telegraphic communication with the latter place and is now in full possession and use of said lines. The statements in this paragraph are alleged on information and belief.

4 11th. Your orator is justly apprehensive, that unless restrained by the injunction of this court, said Ann Arbor Railroad Company will again seize possession of said telegraphic lines and deprive your orator of their use.

To the end that said defendant, The Ann Arbor Railroad Company may answer this bill, but not under oath, answer under oath being hereby expressly waived, and that an injunction both preliminary and final may be issued out of and under the seal of this court, commanding the said Ann Arbor Railroad Company and all its officers and agents to absolutely desist and refrain from in any way interfering with the rights of complainant as alleged in this bill in the telegraph wires and poles running from Thompsonville to Frankfort, or its possession of the same, and that said defendant allow said complainant to reconnect said wires to its main line on the Chicago and West Michigan railroad, and to use said wires for its telegraph business in the same way as it was accustomed to use them before its rights were disturbed by said defendant, and that defendant be required to carry out said contract in good faith and for such other and further or different relief, or both, as may be agreeable to equity and good conscience.

Your orator asks that a subpœna in usual form be issued out of this court, commanding said Ann Arbor Railroad Company, to be and appear before this court on a day named and to answer to this bill of complaint.

THE WESTERN UNION TELEGRAPH COMPANY,
C. A. KENT,
Solicitor and of Counsel for Complainant.

STATE OF MICHIGAN, }
Wayne County. }

On this 14th day of October, A. D. 1895, personally appeared before me a notary public in and for said county Cornelius Corbett well known to me and made oath that he is district superintendent in said Western Union Telegraph Co., for certain States including Michigan, that he has heard read the foregoing bill signed by said company and knows the contents thereof, that the statements of such are true of his own knowledge except as to matters stated on

information and belief and these he believes to be true and that he makes this affidavit as the duly authorized agent of said telegraph company.

KITT B. O'MARA,
Notary Public, Wayne County, Michigan.

5 Copy.

This agreement, made and entered into this twenty-fifth day of September, 1890, by and between the Western Union Telegraph Company, of the first part, and the Frankfort and South Eastern Railroad Company, of the second part, hereinafter designated, respectively, as the telegraph company and the railroad company.

Witnesseth, that whereas, the railroad company owns and operates a railroad between Frankfort and the western terminus of the Toledo, Ann Arbor and Northern Michigan railroad near Copemish, in the State of Michigan, along which railroad and any extensions or branches thereof it is proposed that a telegraph line shall be constructed, maintained and operated.

Now, therefore, for and in consideration of the covenants and agreements herein contained, the parties hereto have mutually agreed as follows:

First. The railroad company agrees to furnish and distribute for the telegraph company, free of cost, along the railroad company's line of railroad between Frankfort and said terminus near Copemish, and along all extensions and branches thereof, as fast as the same shall be completed and in operation, cedar poles, well proportioned and properly peeled, not less than thirty (30) poles to the mile, and at least twenty-five (25) feet in length and six (6) inches in diameter, at the small end.

The railroad company also agrees to furnish, free of cost, to the telegraph company, all the labor to dig holes and set said poles in the ground and to place the wires and insulators thereon, under the direction of a foreman to be furnished by the telegraph company.

And the railroad company agrees, at its own expense, to maintain said poles and the wire or wires thereon, in good order and repair, and to reconstruct said poles and wire or wires when required by the telegraph company, wire and insulators for such repair and reconstruction being furnished by the telegraph company at its expense, as hereinafter provided, and the poles and labor for such repairs and reconstruction to be furnished by the railroad company, free of charge, to the telegraph company.

The telegraph company agrees to furnish, at its own expense, a foreman, who shall oversee and direct the work of construction and reconstruction herein provided for. It is understood and agreed that the railroad company shall exercise the same care and diligence in the maintenance and repair of the wire or wires that the telegraph company has or may have along said railroad for

6 its business, that the railroad company does in the maintenance and repair of the wire or wires used exclusively by it.

It is further understood and agreed that the telegraph company's poles now standing along or near the railroad company's railroad, along Crystal Lake beach, may be used by the railroad company until the same require to be replaced, when the railroad company shall furnish and erect new poles and transfer the wire or wires thereto.

Second. The telegraph company agrees to furnish, at its expense, at some station on the line of said railroad, number nine galvanized wire and insulators for the construction of a telegraph line of one wire along said railroad between Frankfort and said terminus near Copemish, and along all extensions and branches of said railroad as fast as the same shall be completed and in operation, and the telegraph company further agrees to furnish wire and insulators for the maintenance, repair and reconstruction of its line and its wires along said railroad and extensions and branches thereof, and will deliver the same as above free of cost to the railroad company as they may be needed. The telegraph company will also furnish the use of its main batteries in its main offices for the operation of the wires herein provided for. The railroad company agrees to furnish free of charge in its station-houses, suitable space for and attention to main batteries when required by the telegraph company.

Third. The telegraph company agrees to set apart the first wire erected along said railroad and the first wire erected along extensions and branches thereof, for the joint use of the parties hereto in the transmission of railroad and commercial telegraph business, it being agreed that the railroad company's messages of an important character, directing the movement of trains, shall have precedence over said joint wire.

Whenever the railroad business of the railroad company requires the exclusive use of said joint wire, the telegraph company on receiving ninety (90) days' written notice, agrees to furnish the material for the construction of a wire for commercial business, the railroad company agreeing to furnish at its expense the labor for, and to pay the expense of erecting the same, under the direction of a foreman to be furnished by the telegraph company.

After the erection of said second wire, the first wire shall be set apart for the railroad company's railroad business exclusively, and for such commercial business as can be done thereon without interfering with said railroad business. In case of the interruption of either one of said two wires, the business of both parties hereto shall, as far as practicable, be done over the working wire, important railroad messages directing the movement of trains having precedence.

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Fourth. Either party to this agreement may establish and maintain telegraph stations at such places on said railroad as it may deem necessary and at all such stations as the railroad company may establish, the telegraph company agrees to supply Morse instruments and local batteries, and blank forms and stationery for commercial business.

At all telegraph stations of the railroad company, it shall furnish

operators at its own expense; and its operators and other employés acting as agents of the telegraph company, shall receive, transmit and deliver exclusively for the telegraph company party hereto, such commercial or public messages as may be offered, and shall charge the tariff rates of the telegraph company thereon, and shall render to the telegraph company exclusively, monthly statements of such business and full accounts of all receipts therefrom, and the railroad company agrees to pay all of such receipts to the telegraph company in such manner and at such times as it may direct. And said operators and other employés shall not, without the consent of the telegraph company, transmit over said telegraph line any free messages except those herein provided for, and concerning all telegraph business, whether paid or free, shall conform to all rules, regulations and orders of the telegraph company applicable thereto. No employé of the railroad company shall while in its service be employed in the transaction of commercial or public business by or for any party other than the telegraph company party hereto; and the telegraph company shall have the exclusive right to the occupancy of the railroad company's depots and station-houses for commercial or public business as against any other party.

Fifth. All messages of the officers and agents of the railroad company, pertaining to its railroad business, shall be transmitted free of charge by railroad operators on the wires set apart for said business between all telegraph stations on the line of said railroad.

The telegraph company agrees to issue to such officers of the railroad company, as may be designated by the president or general superintendent thereof, annual franks authorizing the free transmission of messages relating strictly to the railroad business of the railroad company's railroad covered by this agreement originating at and destined to points on the telegraph company's lines
8 in the United States beyond or off the lines of said railroad, to an amount not exceeding two hundred and fifty dollars ($250.00) per annum for the first twenty-five (25) miles of railroad constructed by the railroad company and occupied by a telegraph line erected thereon and operated under the provisions of this agreement, and six dollars ($6.00) per annum additional for each additional mile of railroad so constructed, owned, leased or controlled by the railroad company and occupied as aforesaid.

The tolls on all other messages to and from points beyond or off the line of said railroad shall be calculated at the regular commercial day rates of the telegraph company between the points at which such messages originate and the points to which they may be destined.

And the railroad company agrees to pay to the telegraph company one-half of its aforesaid rates on all such messages in excess of said amount. Settlements to be made yearly.

It is understood and agreed that the free telegraphic service herein provided for applies only to the transmission of messages concerning the operation and business of the railroad company's

railroad covered by this agreement, and shall not be extended to any messages to be transmitted by cable, nor messages ordering sleeping car, parlor car or steamer berths, merchandise or accommodations for customers of the railroad company, the tolls of which messages shall be paid by such customers.

Sixth. The railroad company agrees to transport free of charge over its railroad upon application of the superintendent or other officer of the telegraph company all persons in the employ of the telegraph company when traveling on the business of said company; and also to transport and distribute free of charge along the line of its railroad all poles and other material and supplies for the construction, maintenance, operation, repair and reconstruction of the lines and wires covered by this agreement, and of such additional wires and lines of poles and wires as may be erected under the provisions of this agreement and also all materials and supplies for the establishment, maintenance and operation of the offices of each of the parties hereto at places along and adjacent to or at the termini of said railroad.

Seventh. If the telegraph company elects to establish an independent office at a station of the railroad company, the railroad company shall furnish office room light and fuel free of charge in such station, and if at such station one person can attend to the telegraph business of both companies, the agent of the telegraph company, acting for and as the agent of the railroad company in the premises, shall do such business of the railroad company without charge.

Whenever the telegraph business of both companies at any such office becomes so large that more than one operator is needed to attend to it, then the railroad company shall employ and pay its own operator.

Eighth. The railroad company, so far as it legally may hereby grants and agrees to assure to the telegraph company, the exclusive right of way on along and under the line, lands and bridges of the railroad company, and any extensions and branches thereof, for the construction, maintenance, operation and use of lines of poles and wires and underground or other lines for commercial or public uses or business, with the right to put up or construct or cause to be put up or constructed from time to time such additional lines of poles and wires and underground or other lines as the telegraph company may deem expedient, and the railroad company agrees to clear and keep clear said right of way of all trees, undergrowth and other obstructions to the construction and maintenance of the lines and wires provided for herein, and the railroad company will not transport men or material for the construction, maintenance or operation of a line of poles and wire or wires or underground or other lines in competition with the lines of the telegraph company party hereto, except at and for the railroad company's regular local rates, nor will it furnish for any competing lines any facilities or assistance that it may lawfully withhold, nor stop its trains, nor distribute material therefor at other than regular stations.

Provided always that in protecting and defending the exclusive

grants conveyed by this contract, the telegraph company may use and proceed in the name of the railroad company, but shall indemnify and save harmless the railroad company from any and all damages, costs, charges and legal expenses incurred therein or thereby.

Ninth. It is a condition of this contract that the railroad company is not to be responsible for, and the telegraph company hereby covenants and agrees to save the railroad company harmless and indemnify it against any loss or damage of any kind arising from any injury to persons in the employ of, or property belonging to the telegraph company while being carried free over said railroad under this agreement, and from any neglect or failure in the transmission or delivery of messages for any person doing business with the telegraph company, and on account of any other public telegraph business; and the telegraph company shall not be responsible for, and the railroad company agrees to indemnify and save harmless the telegraph company against any loss or damages of any kind arising from or on account of any error, failure, delay or fault in the transmission or delivery of any and all messages sent by or for the railroad company under this agreement.

Tenth. The railroad company shall have the right to the free use of any telegraphic patent rights or new discoveries or inventions that the telegraph company now owns and uses in its general telegraph business or which it may hereafter own and use as aforesaid, so far as the same may be necessary to properly carry on the business of railroad telegraphing on the line of said railroad as provided herein.

Eleventh. It is mutually understood and agreed that the telegraph line, poles, wires and fixtures covered by this contract shall be the property of the telegraph company and shall form part of its general telegraph system, and shall be controlled and regulated by the telegraph company, which shall fix and determine all tariffs for the transmission of messages, and all connections with other lines and interests.

Twelfth. The provisions of this agreement shall extend to all railroads now owned, leased, controlled or operated, and to all railroads hereafter owned, leased, controlled or operated, by the railroad company or by any company or corporation, in which the railroad company *or by any company or corporation, in which the railroad company* may own a majority of the stock, or whose action it may be able to control by ownership of stock or otherwise and the provisions of this agreement shall be and continue in force for and during the term of twenty-five (25) years from the twenty-fifth day of September, 1890, and shall continue after the close of said term until the expiration of one (1) year after written notice shall have been given after the close of said term by either party to the other of an intention to terminate the same, and in case of any disagreement concerning the true intent and meaning of any of said provisions, the subject of such differences shall be referred to three arbitrators, one to be chosen by each party hereto, and the third by

the two other- chosen, and the decision of such arbitrators, or a majority thereof shall be final and conclusive.

In witness whereof the parties to these presents have caused
11 the names of their proper officers to be hereunto subscribed, and their corporate seals to be attached the day and year first above written.

THE WESTERN UNION TELEGRAPH COMPANY,

[SEAL.] (Signed) By JOHN VAN HORNE, *Vice-President.*

(Signed) A. R. BREMER, *Secretary.*

THE FRANKFORT AND SOUTH EASTERN RAILROAD COMPANY,

[SEAL.] (Signed) By HENRY DAY, *President.*

(Signed) D. B. BUTLER, *Secretary.*

STATE OF MICHIGAN:

The Circuit Court for the County of Benzie. In Chancery.

Upon reading and filing the within bill of complaint it is hereby ordered that an injunction issue as prayed in the within bill until the hearing upon the order to show cause this day made or until the further order of the said court.

FRED H. ALDRICH,
Circuit Judge.

In the circuit court for the count of Benzie. In chancery. The Western Union Telegraph Company *vs.* The Ann Arbor Railroad Company. Filed Oct. 15, 1895. R. B. Reynolds, register. C. A. Kent, sol. for compl't.

STATE OF MICHIGAN:

In the Circuit Court for the County of Benzie. In Chancery.

In the name of the People of the State of Michigan to the Ann Arbor Railroad Company, a corporation organized and existing under the laws of Michigan, and to counselors, attorneys, solicitors, and agents and each and every of them, Greeting:

Whereas, it has been represented to us in the circuit court for the county of Benzie in chancery, on the part of The Western Union Telegraph Company, a corporation organized and existing under the laws of the State of New York, complainant, that it has lately exhibited its bill of complaint against you, the said Ann Arbor Railroad Company, defendant, to be relieved, touching the matters therein complained of; in which bill it is stated amongst other things, that you are combining and confederating with others to injure the said complainant touching the matters set forth in the

said bill, and that your actings and doings in the premises
12 are contrary to equity and good conscience, we therefore, in consideration thereof, and of the particular matters in the said bill set forth, do strictly command you the said Ann Arbor Railroad Company and the persons before mentioned, and each and every of you, under the penalty of ten thousand dollars, to be levied on your lands, goods and chattels, to our use, that you do absolutely desist and refrain from interfering with the rights of complainant in the telegraph wires and poles running from Thompsonville to Frankfort both in the State of Michigan, along the line of what was formerly the Frankfort and South Eastern Railroad Company or with its possession of the same and that you also desist and refrain from preventing complainant from reconnecting said telegraph lines with its main line running north from Grand Rapids on the Chicago and West Michigan railroad and from the full use of said wires for its telegraph business in the same way it was accustomed to use them before its rights were disturbed by defendant, said rights arising under a contract between complainant and the Frankfort and South Eastern Railroad Company until the further orders of this court.

Witness the Honorable Fred H. Aldrich, circuit judge, and the seal of said circuit of Benzie this 15th day of
[SEAL.] October in the year one thousand eight hundred and ninety-five.

R. B. REYNOLDS, *Register.*

C. A. KENT,
Solicitor for Compl't.

STATE OF MICHIGAN, } ss:
County of Benzie, }

I hereby certify and return that on the 15th day of October, A. D. 1895, at the township of Gilmore I served the within writ of injunction on L. E. Vorce, agent of the Ann Arbor Railroad Company at South Frankfort, Benzie county, Michigan, also on Oct. 16th, at Thompsonville, Mich., I served the within injunction on Thomas McGrail, agent of The Ann Arbor Railroad Company at Thompsonville, Mich., the defendant named therein, personally by then and there showing to the said Ann Arbor Railroad Company by their agents L. E. Vorce and McQuail the said injunction, with the seal impressed thereon and delivered to them true copies thereof.

CHARLES DOBSON,
Sheriff of said County.

My fees, $3.25.

The circuit court for the county of Benzie. In chancery.
13 The Western Union Telegraph Company, complainant, *vs.* The Ann Arbor Railroad Company, defendant. Injunction. Filed this 22nd day of October, 1895. R. B. Reynolds, register. C. A. Kent, solicitor for compl't.

STATE OF MICHIGAN, *ss:*

The Circuit Court for the County of Benzie. In Chancery.

[SEAL.] In the name of the People of the State of Michigan to the Ann Arbor Railroad Company, Greeting:

You are hereby notified that a bill of complaint has been filed against you in the circuit court for the county of Benzie in chancery, by The Western Union Telegraph Company, as complainant, and that if you desire to defend the same you are required to have your appearance entered with the register of said court at his office, in the town of Frankfort in said county, in person or by solicitor, within twenty days after the 29th day of October, in the year 1895, which is the return day of this writ. Hereof fail not under the penalty of having said bill taken as confessed against you.

Witness, the Hon. Fred. H. Aldrich, circuit judge, at Frankfort, this 15th day of October, in the year of our Lord one thousand eight hundred and ninety-five.

R. B. REYNOLDS, *Register.*

C. A. KENT,
Solicitor for Complainant.

Underwriting.—A personal decree is sought against the defendant, The Ann Arbor Railroad Company, and the bill is filed to reach interests in property, and not to obtain any further relief against the remainder of the defendants.

C. A. KENT,
Solicitor for Complainant.

STATE OF MICHIGAN, }
County of Benzie, } *ss:*

I hereby certify and return that, on the 15th day of October, A. D. 1895, at South Frankfort, I served the within subpœna, personally, on L. E. Vorce, agent of Ann Arbor Railroad Co. I hereby certify and return that on the 16th day of October, A. D. 1895, at Thompsonville I served the within subpœna personally on McCrail, agent of the Ann Arbor Railroad Co. I hereby certify and return that on the 16th day of October, A. D. 1895, at Thompsonville, I served
14 the within subpœna personally on W. F. Bradley, agent of The Ann Arbor Railroad Co., defendant named in said subpœna, by then and there, at the place and on the date above mentioned, delivering to said above-named defendants a true copy of the said subpœna, inscribed "copy" and subscribed —— ——, complainant's solicitor, and by showing at the same time to the said above-named defendant the said subpœna, with the seal of the court impressed thereon, on which copy so served was true copy of the underwriting on the said subpœna.

CHARLES DOBSON, *Sheriff.*

My fees, service, $3.25.

The circuit court for the county of Benzie. In chancery. The Western Union Telegraph Company, complainant, *vs.* The Ann

Arbor Railroad Company, defendant. Subpœna. Returned and filed Oct. 22, A. D. 1895. R. B. Reynolds, register. C. A. Kent, solicitor for complainants.

In the Circuit Court for the County of Benzie, State of Michigan.

THE WESTERN UNION TELEGRAPH COMPANY, Complainant, *vs.* THE ANN ARBOR RAILROAD COMPANY, Defendant.	In Chancery. Petition for Removal.

To the honorable the circuit court for the county of Benzie, State of Michigan:

Your petitioner, The Ann Arbor Railroad Company, defendant herein, respectfully shows to the court that it is a corporation, duly organized under the laws of the State of Michigan, and is a citizen of the said State of Michigan; that the said complainant, The Western Union Telegraph Company is a corporation duly organized under the laws of the State of New York and is a citizen of said State of New York.

Your petitioner further shows to the court that the matter and amount in dispute in the above-entitled cause exceeds, exclusive of interest and costs the sum and value of two thousand dollars ($2,000); that this suit is one arising under the Constitution and laws of the United States, and especially under the act of Congress of July 24th, 1866, now contained in section 5263 of the Revised Statutes of the United States and the amendments thereto.

15 Your petitioner offers herein a good and sufficient surety for entering in the circuit court of the United States for the western district of Michigan, southern division, on the first day of its next session, a copy of the record of this suit and for paying all costs that may be awarded by said circuit court if this court shall hold that this suit was wrongfully or improperly removed thereto.

And this petitioner prays *that* honorable court to proceed no further herein except to make an order to remove said cause, accept said surety and bond, and cause the record herein to be removed into the said circuit court of the United States for the western district of Michigan, southern division. And petitioner will ever pray, etc.

THE ANN ARBOR RAILROAD COMPANY,
By ALEXANDER L. SMITH, *Its Solicitor.*

THE STATE OF OHIO, } ss:
Lucas County, }

Alexander L. Smith being first duly sworn says that he is solicitor for the said defendant, The Ann Arbor Railroad Company; that the said defendant is a corporation; that the matters and things set forth in the foregoing petition are true.

ALEXANDER L. SMITH.

Sworn to before me and in my presence subscribed this 30th day of October, 1895.

W. G. DENMAN,
Notary Public, Lucas Co., Ohio.

225. Circuit court of Benzie county. The Western Union Telegraph Co. *vs.* The Ann Arbor Railroad Co. Petition for removal. Filed Nov. 5, 1895. R. B. Reynolds, reg. A. L. Smith, att'y for def't.

In the Circuit Court for the County of Benzie, State of Michigan.

THE WESTERN UNION TELEGRAPH COMPANY, Complainant, *vs.* THE ANN ARBOR RAILROAD COMPANY, Defendant. } Bond for Removal.

Know all men by these presents that we, the Ann Arbor
16 Railroad Company, as principal and W. R. Burt as sureties are held and firmly bound unto the Western Union Telegraph Company in the penal sum of five hundred dollars ($500.00) to the payment whereof, well and truly to be made unto the said The Western Union Telegraph Company, its successors and assigns, we do hereby bind ourselves, our successors, heirs and administrators.

Upon condition nevertheless; that whereas, the said The Ann Arbor Railroad Company has filed its petition in the circuit court of the county of Benzie, State of Michigan, for the removal of the cause pending in said court, wherein The Western Union Telegraph Company is complainant, and the said The Ann Arbor Railroad Company is defendant, to the circuit court of the United States for the western district of Michigan, southern division.

Now, if the said The Ann Arbor Railroad Company shall enter into the said circuit court of the United States on the first day of its next session a copy of the record of said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void, otherwise it shall remain in full force and virtue.

In witness whereof, the said The Ann Arbor Railroad Company as principal and W. R. Burt as sureties have hereunto set our hands and seals this 31st day of October, 1895.

THE ANN ARBOR RAILROAD COMPANY,
By W. R. BURT, *President.*
THE ANN ARBOR R. R. CO.
W. R. BURT.

I hereby approve the above and foregoing bond and the surety therein.

FRED H. ALDRICH,
Circuit Judge.

225. Circuit court of Benzie Co. The Western Union Telegraph Co. *vs.* The Ann Arbor Railroad Co. Bond for removal. Filed Nov. 5, 1895. R. B. Reynolds, reg. Alex. L. Smith, sol. for def't.

17 STATE OF MICHIGAN:

Circuit Court of Benzie County.

THE WESTERN UNION TELEGRAPH COMPANY, Complainant, *vs.* THE ANN ARBOR RAILROAD COMPANY, Defendant. } Order for Removal.

This day came the defendant The Ann Arbor Railroad Company and presented to the court its petition herein for an order for the removal of this cause to the United States circuit court, western district of Michigan, southern division, together with bond in the sum of five hundred dollars ($500) conditioned according to law, for the removal of said cause, signed by the said defendant as principal and Wellington R. Burt, as surety, and it appearing that said petition is in proper form and that said surety and bond are sufficient, it is ordered that said surety and bond be and the same are hereby accepted. That no further proceedings be had in this court in this cause, and that the same be removed unto the said circuit court of the United States in and for the western district of Michigan, southern division.

FRED H. ALDRICH,
Circuit Judge.

225. State of Michigan. Circuit court, Benzie county. The Western Union Telegraph Company, complainant, *vs.* The Ann Arbor Railroad Co., defendant. Order for removal of cause. Filed Nov. 5, 1895. R. B. Reynolds, reg. Alexander L. Smith, solicitor.

No. 1198. The circuit court of the United States for the western district of Michigan, southern division. In equity. State of Michigan. Circuit court for the county of Benzie. In chancery. The Western Union Telegraph Company *vs.* The Ann Arbor Railroad Company. Copy of record. Filed Nov. 18, 1895. Chas. L. Fitch, clerk.

18 In the Circuit Court of the United States, Western District of Michigan, Southern Division.

THE WESTERN UNION TELEGRAPH COMPANY, Complainant, *vs.* THE ANN ARBOR RAILROAD COMPANY, Defendant. } No. —.

Answer.

Now comes the defendant, The Ann Arbor Railroad Company, a corporation organized and existing under the laws of the State of

Michigan and for its answer to the bill of complaint herein, or to so much and such parts thereof as it is advised it is necessary for it to respond unto, says:

First. That it admits the truth of the allegations contained in the first and second paragraphs of the bill of complaint.

Second. As to the matters and things set forth in the third paragraph of the bill of complaint this respondent alleges the facts to be as follows: That on or about the first day of March, 1889, the said The Frankfort & Southeastern Railroad Company executed a mortgage upon all of its property and assets of every kind and description, whether then owned or thereafter to be acquired by said company, to Henry Day and Albert C. Hall as trustees which mortgage was thereupon, to wit, on the 11th day of May, 1889, duly recorded in the county of Benzie, in which said property was for the most part located, and as defendant believes, also in the counties of Manistee and Wexford through or into which said line of railroad extended, and became and continued thereafter to be a first lien upon all the property and assets of said company of every kind and description. That said mortgage was made to secure the issue of bonds of said company to the amount of $235,000.00, which were duly issued and sold to divers and sundry purchasers as defendant is informed and believes at or about the time of the execution and recording of said mortgage. That at the time of the purchasing of the said railroad of the Frankfort and Southeastern Railroad Company by said The Toledo, Ann Arbor & North Michigan Railway Company, which took place in the month of May, 1892, said mortgage was an outstanding valid lien securing the whole of the said issue of bonds upon the property of said The Frankfort & Southeastern Railroad Company so transferred to said The Toledo,
19 Ann Arbor & North Michigan Railway Company. That as a part of the consideration of the said purchase and transfer, said The Toledo, Ann Arbor & North Michigan Railway Company agreed and undertook to pay the indebtedness secured by said mortgage. That by said transfer and purchase the railroad and all the property of said Frankfort & Southeastern Railroad Company became the property of said The Toledo, Ann Arbor & North Michigan Railway Company.

This respondent further says that prior to the purchase of said property of the Frankfort & Southeastern Railroad Company, to wit, in the month of January, 1890, the said Toledo, Ann Arbor & North Michigan Railway Company had executed to the Farmers' Loan & Trust Company a consolidated mortgage upon all the property of said company then owned or thereafter to be acquired, being as respondent supposes the mortgage which is set up in the third paragraph of the bill of complaint. That said mortgage was made to secure an issue of bonds, a large number of which, to wit, about one million three hundred thousand dollars in amount were outstanding at the time of said purchase and transfer. That thereupon by virtue of the terms of said mortgage, the same became a lien upon all the property of said The Frankfort & Southeastern

Railroad Company, subject however to the prior lien of said mortgage to said Hall and Day, as trustees.

This respondent further says that subsequently, to wit, on or about the month of January, A. D. 1894, the indebtedness secured by said mortgage of the Frankfort & Southeastern Railroad Company became and was due, and the same being unpaid a suit was begun by the trustees named in said mortgage, in this court to foreclose the same, and cause the property to be sold for the satisfaction thereof. That such proceedings were had therein as that all the parties interested were made parties to said suit, and thereupon a decree was rendered for the sale of the said property for the satisfaction of said indebtedness, and said property was sold on or about the first day of June, 1895, for an amount largely insufficient to satisfy the said debt, to Albert C. Hall and George Lord Day, and thereupon a deed was made by order of said court to said purchasers for the same. And thereupon said purchasers caused to be incorporated under the laws of the State of Michigan, a certain corporation named the Escanaba, Frankfort & Southeastern Railroad Company, to which said property was duly conveyed and transferred by said purchasers, and thereupon the said The Escanaba, Frankfort & Southeastern railroad duly transferred in accordance with law, all its property and assets to this respondent, who is now the owner of the same. By virtue of the premises this respondent alleges that it became subrogated to and succeeded to all the rights of the mortgagees in said mortgage executed by said Frankfort & Southeastern Railroad Company.

This respondent says it is true that said consolidated mortgage was foreclosed by appropriate proceedings in this court and the property covered thereby was sold under a decree entered in said foreclosure proceedings subject to the lien of the mortgage executed by the Frankfort & Southeastern Railroad Company as aforesaid, so far as said lien extended, and that the purchaser at said judicial sale has transferred and conveyed to this respondent all the property and assets so by him purchased as aforesaid. That by virtue of the premises this respondent has become subrogated to and succeeded to all the rights of the mortgagee under said consolidated mortgage. It is true that complainant was not a party to either of said foreclosure suits.

Third. This respondent admits the truth of the allegations of the fourth, fifth and sixth paragraphs of the bill of complaint.

Fourth. This respondent denies the allegations contained in the seventh paragraph of the bill of complaint.

Fifth. As to the allegations of the eighth paragraph of the bill of complaint, this respondent says that the same are substantially true.

Sixth. As to the allegations of the ninth paragraph of the bill this respondent says that it denies that the value of the telegraph lines is the sum of at least three thousand dollars ($3,000) and further denies that the damages arising from the loss to the business will be as large as therein alleged.

Seventh. As to the allegations contained in the tenth paragraph of the bill this respondent says that the facts are as follows: On

Monday, October 14, 1895, the complainant attempted to reconstruct their said telegraph lines running from Thompsonville to Frankfort, but *were* prevented from so doing by this respondent. That on Tuesday, October 15, 1895, said plaintiff obtained the temporary writ of injunction herein allowed by the circuit court of Benzie county and thereupon under cover and protection of the said injunction on Wednesday, October 16, 1895, the said complainant took possession of the poles and wires in question and restored them to the situation in which they originally were, and so ob-
21 tained possession of the property under said process of injunction; that since said last-named date the complainant has been in full possession and enjoyment of the property and privileges in question.

Wherefore this respondent denies that said complainant is entitled to the relief herein prayed for, or any part thereof, or to any relief whatever in this cause, and prays the same advantage of this answer as if it had pleaded or demurred to the said bill of complaint, and prays to be dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE ANN ARBOR RAILROAD COMPANY,
By ALEX. L. SMITH, *Its Solicitor.*

STATE OF OHIO, } ss:
Lucas County, }

Henry W. Ashley, being first duly sworn, makes oath and says that he is the general manager of The Ann Arbor Railroad Company, the defendant herein, and that the matters and things set forth in its foregoing answer are true.

HENRY W. ASHLEY.

Sworn to before me and subscribed in my presence this 18th day of November, A. D. 1895.

[NOTARIAL SEAL.]

W. G. DENMAN,
Notary Public, Lucas County, Ohio.

No. 1198. Circuit court of the United States, western district of Michigan, southern division. The Western Union Telegraph Co., complainant, *vs.* The Ann Arbor Railroad Co., defendant. Answer. Filed Nov. 20, 1895. Chas. L. Fitch, clerk. Alexander L. Smith, att'y.

In the United States Circuit Court, Western District of Michigan, Southern Division.

THE WESTERN UNION TELEGRAPH COMPANY, Complainant, *vs.* THE ANN ARBOR RAILROAD COMPANY, Defendant. } Motion.

Now comes the defendant, The Ann Arbor Railroad Company and moves the court to dissolve the injunction herein allowed and

shows for cause that upon the facts as the same appear in the
22 pleadings said injunction was allowed without warrant either in law or equity, and that it would be unjust and inequitable to continue the same.

THE ANN ARBOR RAILROAD COMPANY,
By ALEXANDER L. SMITH,
Its Solicitor.

No. 1198. In the United States circuit court, western district of Michigan, southern division. The Western Union Telegraph Company, complainant, *vs.* The Ann Arbor Railroad Co., defendant. Motion to dissolve injunction. Filed Nov. 20, 1895. Chas. L. Fitch, clerk. Alexander L. Smith, att'y.

The United States Circuit Court for the Western District of Michigan, Southern Division. In Chancery.

THE WESTERN UNION TELEGRAPH COMPANY, Complainant,
vs.
THE ANN ARBOR RAILROAD COMPANY, Defendant.

The replication of The Western Union Telegraph Company, complainant, to the answer of The Ann Arbor Railroad Company, defendant.

This repliant, saving and reserving to itself now and at all times hereafter, all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the said answer for replication thereunto, say- that it will aver, maintain and prove the bill of complaint to be true, certain and sufficient in the law, to be answered unto; and that the said answer is uncertain, untrue and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatever, in the said answer contained, material or effectual in the law, to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray- as in and by its said bill it has already prayed.

C. A. KENT,
Solicitor for Complainant.

No. 1198. The United States circuit court for the western
23 district of Michigan, southern division. In chancery. The Western Union Telegraph Company, complainant, *vs.* The Ann Arbor Railroad Company, defendant. Replication. Filed this 26th day of November, 1895. Chas. L. Fitch, clerk. C. A. Kent, solicitor for complainant.

United States Circuit Court, Western District of Michigan, Southern Division.

THE WESTERN UNION TELEGRAPH COMPANY, Complainant,
vs.
THE ANN ARBOR RAILROAD COMPANY, Defendant. } Stipulation.

The complainant in the above-entitled cause, The Western Union Telegraph Company, hereby consents to the filing of the cross-bill herein against it, by the Ann Arbor Railroad Company, and waives the issue and service of process of subpœna thereon, acknowledges service of a copy of said cross-bill and enters it- appearance to the same.

Compl't may demur to said cross-bill without affidavit or certificate of counsel as provided by rules, or it may answer.

C. A. KENT,
Compl't's Solicitor.

No. 1198. The U. S. cir't ct., west. dist. of Michigan, southern division. The Western Union Telegraph Company, complainant, *vs.* The Ann Arbor Railroad Co., defendant. Stipulation for filing cross-bill. Filed Apr. 13, 1896. Chas. L. Fitch, clerk. Alexander L. Smith, att'y.

March Term, A. D. 1896.

MONDAY, *April* 13, 1896.

The court met pursuant to adjournment.

Present: The Honorable Henry H. Swan, district judge.

THE WESTERN UNION TELEGRAPH COMPANY, Complainant,
vs.
THE ANN ARBOR RAILROAD COMPANY, Defendant. } No. 1198.

By consent of parties and for good cause shown, it is ordered that the defendant in the above-entitled cause, The Ann Arbor Railroad Company, have leave to file its cross-bill herein instanter against said complainant, The Western Union Telegraph Company, and thereupon said cross-bill having been filed, came the Western Union Telegraph Company and waived the issue and service of process of subpœna on the same, as prayed for therein and acknowledged service of a copy of the same and entered its appearance thereto.

And by consent of both parties said cause is continued to the next term of court.

In the Circuit Court of the United States, Western District of Michigan.

THE WESTERN UNION TELEGRAPH COMPANY, Complainant,
vs.
THE ANN ARBOR RAILROAD COMPANY, Defendant.

To the honorable the judges of the circuit court of the United States for the western district of Michigan:

The Ann Arbor Railroad Company, a corporation organized and existing under the laws of the State of Michigan and a citizen of said State, now comes and files its cross-bill against the Western Union Telegraph Company (hereinafter designated as the telegraph company) a corporation organized and existing under the laws of the State of New York, and a citizen of said State and thereupon complaining says:

1st. That on or about the 15th day of October, 1895, the said telegraph company filed its bill of complaint against the Ann Arbor Railroad Company in the circuit court of the county of Benzie, State of Michigan, in the district aforesaid, setting forth in substance that on the 25th day of September, 1890, the Frankfort & Southeastern Railroad Company a corporation of the State of Michigan being the owner of and operating a line of railroad from Frankfort in said State to the western terminus of the Toledo, Ann Arbor & North Michigan railway, near Copemish in said State, entered into a written contract in writing with the telegraph company providing for the construction and maintenance of a line of telegraph along the entire length of its said railroad a copy of which said contract is attached to said bill and is hereto attached and made a part hereof.

Said bill also set forth that in pursuance of said contract said line was built by said telegraph company in May, June and July, 1891, and operated as therein provided by the telegraph company and the Frankfort & Southeastern Railroad Company and the Toledo, Ann Arbor & North Michigan Railway Company (a Michigan corporation) which became the owner of the railroad of said The Frankfort & Southeastern Railroad Company by purchase in May, 1892.

Said bill also set forth the making by said Toledo, Ann Arbor & North Michigan Railway Company, subsequent to the execution of said contract, of a mortgage of its entire railroad to the Farmers' Loan & Trust Company, as trustee; the foreclosure of said mortgage by proceedings in the United States circuit court for the eastern district of Michigan; the sale under order of said court of said railroad to the Ann Arbor Railroad Company; and the confirmation of said sale by said court; that the telegraph company was not a party to said suit; that the said Ann Arbor Railroad Company purchased said railroad with full knowledge of the rights of the telegraph company on the line of telegraph therein described; that said purchaser claimed not to be bound by said contract and had given the telegraph company written notice to this effect; that the said telegraph company is engaged in an extensive telegraph

business and had duly accepted the provisions of the act of the United States of July 24, 1866; that the Ann Arbor Railroad Company was bound by the provisions of said contract; that independently of said contract the telegraph company had a right to maintain its telegraph line on said railroad property under the statute of the United States; that about the 1st day of October, 1895, the Ann Arbor Railroad Company took possession of its wires between Thompsonville and Frankfort and cut off their connection with its other wires and deprived the telegraph company of its telegraphic connection with Frankfort and at the same time continued to use said wires for its own business; that subsequently said telegraph company reconnected said wires and regained possession thereof; but fearing that said railroad company might again seize possession of said line of telegraph said telegraph company prayed for an injunction restraining said railroad company from interfering with the telegraph company in the possession and use of said wires as it had been accustomed to use them, and praying
26 for the specific enforcement as against the Ann Arbor Railroad Company of said contract; whereupon a preliminary injunction was allowed by said circuit court of Benzie county restraining the defendant from interfering with the possession and use of said wires by the telegraph company in the way it had been accustomed to use them.

2nd. That by appropriate proceedings said cause was removed to this court by the defendant, The Ann Arbor Railroad Company.

3rd. That thereupon your orator filed its answer fully responding to the averments of the said bill, to which answer it now refers and the allegations of which it adopts as though set out herein.

4th. That in this its cross-bill, your orator says that it does claim not to be bound by said contract of September 25, 1890, between the telegraph Co., and the Frankfort & Southeastern Railroad Company, that it gave written notice to that effect to the telegraph company prior to the time of taking possession by it of said railroad property and prior to the beginning of said suit.

5th. That the Frankfort & Southeastern Railroad Company had prior to May, 1892, when your orator purchased its said railroad, duly complied with the terms of said contract by it to be performed and in particular had furnished the poles and labor necessary in the construction of said line of telegraph.

6th. That the poles so furnished by said Frankfort and Southeastern Railroad Company were as your orator believes, included in and covered by the mortgage executed by the Frankfort & Southeastern Railroad Company on the 1st day of March, 1889, and as such passed to your orator as the assignee of the purchaser at the sale under foreclosure of said mortgage as set forth in the second paragraph of the answer to the original bill to which reference is here made; that your orator does not claim that the wires and insulators and other parts of said line of telegraph furnished by the telegraph company are the property of the Ann Arbor Railroad Company.

7th. Since the allowance of said order of injunction and by reason

thereof your orator and said telegraph company have been using and operating said line of telegraph in substantially the same way as prior to the beginning of said suit.

8th. Your orator, therefore, not being as it conceives, bound by said contract and being unwilling longer to operate under the same.

To the end that the defendant in this cross-bill, The Western
27 Union Telegraph Company, may answer hereto but not under oath, answer under oath being expressly waived.

Your orator prays that said contract of September 25th, 1889, be cancelled and held for naught as against the Ann Arbor Railroad Company; that an accounting may be had as between the parties as touching their respective rights and interests in and to the property constituting said line of telegraph; that said telegraph company may be required to desist and refrain from making use of the property of your orator for the operation of its telegraph wires and to remove the same from your orator's property, and for such other or different relief as may be agreeable to equity and good conscience.

Your orator asks that a subpœna in the usual form be issued out of this court commanding the Western Union Telegraph Company to be and appear before this court on a day named and to answer to this cross-bill.

THE ANN ARBOR RAILROAD COMPANY,
By ALEX. L. SMITH, *Its Solicitor.*

ALEX. L. SMITH, *Of Counsel.*

Copy.

This agreement made and entered into this twenty-fifth day of September, 1890, by and between the Western Union Telegraph Company of the first part, and the Frankfort and Southeastern Railroad Company of the second part, hereinafter designated respect*fully* as the telegraph company and the railroad company.

Witnesseth, that, whereas the railroad company owns and operates a railroad between Frankfort and the western terminus of the Toledo, Ann Arbor and Northern Michigan railroad near Copemish, in the State of Michigan, along which railroad and any extensions or branches thereof, it is proposed that a telegraph line shall be constructed, maintained and operated;

Now, therefore, for and in consideration of the covenants and agreements herein contained, the parties hereto have mutually agreed as follows:

First. The railroad company agree to furnish and distribute for the telegraph company, free of cost, along the railroad company's line of railroad between Frankfort and said terminus near Copemish, and along all extensions and branches thereof, as fast as the same shall be completed and in operation, cedar poles, well proportioned and properly peeled, not less than thirty (30) poles to
28 the mile, and at least twenty-five (25) feet in length and six (6) inches in diameter at the small end.

The railroad company also agrees to furnish free of cost to the telegraph company all the labor to dig holes and set said poles in

the ground and to place the wires and insulators thereon under the direction of a foreman to be furnished by the telegraph company. And the railroad company agrees at its own expense, to maintain said poles and the wire or wires thereon, in good order and repair, and to reconstruct said poles and wire or wires when required by the telegraph company, wire and insulators for such repair and reconstruction being furnished by the telegraph company at its expense, as hereinafter provided, and the poles and labor for such repair and reconstruction to be furnished by the railroad company free of charge to the telegraph company.

The telegraph company agrees to furnish at its expense a foreman who shall oversee and direct the work of construction and reconstruction herein provided for.

It is understood and agreed that the railroad company shall exercise the same care and diligence in the maintenance and repair of the wire or wires that the telegraph company has or may have along said railroad for its business, that the railroad company does to in the maintenance and repair of the wire or wires used exclusively by it.

It is further understood and agreed that the telegraph company's poles now standing along or near the railroad company's railroad along Crystal Lake beach may be used by the railroad company until the same require to be replaced when the railroad company shall furnish and erect new poles and transfer the wire or wires thereto.

Second. The telegraph company agrees to furnish at its expense, at some station on the line of said railroad number nine galvanized wire and insulators for the construction of a telegraph line of one wire along said railroad between Frankfort and said terminus near Copemish, and along all extensions and branches of said railroad as fast as the same shall be completed and in operation, and the telegraph company further agrees to furnish wire and insulators for the maintenance, repair and reconstruction of its line and its wires along said railroad and extensions and branches thereof, and will deliver the same as above free of cost to the railroad company as they may be needed. The telegraph company will also furnish the use of its main batteries in its main offices for the operation of the wires herein provided for.

29 The railroad company agrees to furnish free of charge in its station-houses, suitable space for and attention to main batteries when required by the telegraph company.

Third. The telegraph company agrees to set apart the first wire erected along said railroad and the first wire erected along extensions and branches thereof, for the joint use of the parties hereto in the transmission of railroad and commercial telegraph business, it being agreed that the railroad company's messages of an important character, directing the movement of trains, shall have precedence over said joint wire.

Whenever the railroad business of the railroad company requires the exclusive use of said joint wire, the telegraph company on receiving ninety (90) days' written notice, agrees to furnish the mate-

rial for the construction of a wire for commercial business, the railroad company agreeing to furnish at its expense the labor for, and to pay the expenses of erecting the same, under the direction of a foreman to be furnished by the telegraph company. After the erection of said second wire, the first wire shall be set apart for the railroad company's railroad business exclusively, and for such commercial business as can be done thereon without interfering with said railroad business. In case of the interruption of either one of said two wires, the business of both parties hereto shall, as far as practicable, be done over the working wire, important railroad messages directing the movement of trains having precedence.

Fourth. Either party to this agreement may establish and maintain telegraph stations at such places on said railroad as it may deem necessary and at all such stations as the railroad company may establish, the telegraph company agrees to supply Morse instruments and local batteries, and blank forms and stationary for commercial business.

At all telegraph stations of the railroad company it shall furnish operators at its own expense; and its operators and other employés acting as agents of the telegraph company, shall receive, transmit and deliver exclusively for the telegraph company party hereto, such commercial or public messages as may be offered, and shall charge the tariff rates of the telegraph company thereon, and shall render to the telegraph company exclusively, monthly statements of such business and full accounts of all receipts therefrom, and the railroad company agrees to pay all of such receipts to the telegraph company in such manner and at such times as it may direct. And said operators and other employés shall not, without the consent of the telegraph company, transmit over said telegraph line any free messages except those herein provided for, and concerning all telegraph business, whether paid or free, shall conform to all rules, regulations and orders of the telegraph company applicable thereto. No employé of the railroad company shall while in its service be employed in the transaction of commercial or public business by or for any party other than the telegraph company pay thereto; and the telegraph company shall have the exclusive right to the occupancy of the railroad company's depots and station-houses for commercial or public business as against any other party.

Fifth. All messages of the officers and agents of the railroad company, pertaining to its railroad business, shall be transmitted free of charge by railroad operators on the wire set apart for said business between all telegraph stations on the line of said railroad.

The telegraph company agrees to issue to such officers of the railroad company, as may be designated by the president or general superintendent thereof, annual franks authorizing the free transmission of messages relating strictly to the railroad business of the railroad company's railroad covered by this agreement, originating at and destined to points on the telegraph company's lines in the United States, beyond or off the line of said railroad, to an amount not exceeding two hundred and fifty dollars ($250.00) per annum

for the first twenty-five (25) miles of railroad constructed by the railroad company and occupied by a telegraph line erected thereon and operated under the provisions of this agreement, and six dollars ($6.00) per annum additional for each additional mile of railroad so constructed, owned, leased, or controlled by the railroad company and occupied as aforesaid.

The tolls on all such messages to and from points beyond or off the line of said railroad shall be calculated at the regular commercial day rates of the telegraph company between the points at which such messages originate and the points to which they may be destined. And the railroad company agrees to pay to the telegraph company one-half of its aforesaid rates on all such messages in excess of said amount. Settlements to be made yearly.

It is understood and agreed that the free telegraphic service herein provided for applies only to the transmission of messages concerning the operation and business of the railroad company's railroad covered by this agreement, and shall not be extended to any messages for transmission by cable, nor to messages ordering sleeping-car, parlor-car or steamer berths, merchandise or accommodations for customers of the railroad company, the tolls on which messages shall be paid by such customers.

Sixth. The railroad company agrees to transport free of charge over its railroad upon application of the superintendent or other officer of the telegraph company, all persons in the employ of the telegraph company when traveling on the business of said company, and also to transport and distribute free of charge along the line of its railroad, all poles and other material and supplies for the construction, maintenance, operation, repair and reconstruction of the lines and wires covered by this agreement, and of such additional wires and lines of poles and wires as may be erected under the provisions of this agreement, and also all material and supplies for the establishment, maintenance and operation of the office of each of the parties hereto at places along and adjacent to or at the termini of said railroad.

Seventh. If the telegraph company elects to establish an independent office at a station of the railroad company, the railroad company shall furnish office room, light and fuel free of charge in such station, and if at such station one person can attend to the telegraph business of both companies, the agent of the telegraph company, acting for and as the agent of the railroad company in the premises, shall do such business of the railroad company without charge.

Whenever the telegraph business of both companies at any such office becomes so large that more than one operator is needed to attend to it, then the railroad company shall employ and pay its own operator.

Eighth. The railroad company, so far as it legally may, hereby grants and agrees to assure to the telegraph company, the exclusive right of way on, along and under the line, lands and bridges of the railroad company, and any extensions and branches thereof, for the construction, maintenance, operation and use of lines, of poles and

wires and underground or other lines for commercial or public uses or business, with the right to put up or construct or cause to be put up or constructed from time to time such additional wires and such additional lines of poles and wires and underground or other lines as the telegraph company may deem expedient, and the railroad company agrees to clear and keep clear said right of way of all trees, undergrowth and other obstructions to the construction
32 and maintenance of the lines and wires provided for herein, and the railroad company will not transport men or material for the construction, maintenance or operation of a line of poles and wire or wires or underground or other line in competition with the lines of the telegraph company party hereto, except at and for the railroad company's regular local rates, nor will it furnish for any competing line any facilities or assistance that it may lawfully withhold, nor stop its trains, nor distribute material therefor at other than regular stations.

Provided always, that in protecting and defending the exclusive grants conveyed by this contract, the telegraph company may use and proceed in the name of the railroad company, but shall indemnify and save harmless the railroad company from any and all damages, costs, charges and legal expenses incurred therein or thereby.

Ninth. It is a condition of this contract that the railroad company is not to be responsible for, and the telegraph company hereby covenants and agrees to save the railroad company harmless and indemnify it against any loss or damages of any kind arising from any injury to persons in the employ of, or property belonging to the telegraph company while being carried free over said railroad under this agreement, and from any neglect or failure in the transmission or delivery of messages for any person doing business with the telegraph company and on account of any other public telegraph business; and the telegraph company shall not be responsible for, and the railroad company agrees to indemnify and save harmless the telegraph company against any loss or damages of any kind arising from or on account of any error, failure, delay or default in the transmission or delivery of any and all messages sent by or for the railroad company under this agreement.

Tenth. The railroad company shall have the right to the free use of any telegraphic patent rights or new discoveries or inventions that the telegraph company now owns and uses in its general telegraph business, or which it may hereafter own and use as aforesaid, so far as the same may be necessary to properly carry on the business of railroad telegraphing on the line of said railroad as provided for herein.

Eleventh. It is mutually understood and agreed that the telegraph line, poles, wires and fixtures covered by this contract shall be the property of the telegraph company and shall form part of its general telegraph system, and shall be controlled and regulated by the telegraph company, which shall fix and determine all tariffs for the transmission of messages, and all connections with other lines and interests.

33 Twelfth. The provisions of this agreement shall extend to all railroads now owned, leased, controlled or operated, and to all railroads hereafter owned, leased, controlled or operated by the railroad Co., or by any company or corporation, in which the railroad company may own a majority of the stock, or whose action it may be able to control by the ownership of stock or otherwise and the provisions of this agreement shall be and continue in force for and during the term of twenty-five (25) years from the twenty-fifth day of September, 1890, and shall continue after the close of said term until the expiration of one (1) year after written notice shall have been given after the close of said term by either party to the other of an intention to terminate the same, and in case of any disagreement concerning the true intent and meaning of any of said provisions, the subject of such difference shall be referred to three arbitrators, one to be chosen by each party hereto, and the third by the two other chosen, and the decision of such arbitrators, or of a majority thereof shall be final and conclusive.

In witness whereof, the parties to these presents have caused the names of their proper officers to be hereunto subscribed, and their corporate seals to be attested, the day and year first above written.

THE WESTERN UNION TELEGRAPH COMPANY,

[SEAL.] (Signed) By JOHN VAN HORNE,
Vice-President.

(Signed) A. B. BREWER, *Secretary.*

THE FRANKFORT AND SOUTH-EASTERN RAILROAD COMPANY,

[SEAL.] (Signed) By HENRY DAY, *President.*

(Signed) D. B. BUTLER, *Secretary.*

No. 1198. In the circuit court of the United States, western district of Michigan. The Western Union Telegraph Company, complainant, *vs.* The Ann Arbor Railroad Company, defendant. Cross-bill. Filed April 13, 1896. Chas. L. Fitch, clerk. Alexander L. Smith, sol's for the Ann Arbor R. R. Co. and of counsel.

34 United States Circuit Court, Western District of Michigan, Southern Division.

THE WESTERN UNION TELEGRAPH COMPANY, Complainant,
vs.
THE ANN ARBOR RAILROAD COMPANY, Defendant.

Stipulation as to Facts.

In the above-entitled cause it is agreed and stipulated by and between the parties hereto, the Western Union Telegraph Company, and the Ann Arbor Railroad Company, in addition to the matters and things alleged in the bill of complaint, which are not denied by the answer, that the matters and things alleged as mat-

ters of fact in the second paragraph of the answer are true; that the allegations in the tenth paragraph of the bill are true; (the seventh paragraph of the answer of the defendant being withdrawn); that the allegations contained in paragraphs five and seven of the cross-bill of the defendant against the complainant herein filed are true; that all the parties through whom defendant claims title as well as defendant, bought with full knowledge of the complainant's rights and claims under said contract with the Frankfort and Southeastern Railroad Company, and that if the value of the telegraph line in controversy becomes material, evidence may be taken thereon by either party; and that this cause may be submitted to the court for final decree upon the pleadings and this stipulation as to facts.

ALEXANDER L. SMITH,
Solicitor for Defendant.

C. A. KENT,
Solicitor for Plaintiff.

No. 1198. U. S. circuit court, western district of Michigan, southern division. The Western Union Telegraph Company, complainant, *vs.* The Ann Arbor Railroad Co., defendant. Stipulation as to facts. Filed June 22, 1896. Chas. L. Fitch, clerk. Alexander L. Smith, solicitor for defendant.

35 March Term, A. D. 1897.

MONDAY, *March* 8, 1897.

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

THE WESTERN UNION TELEGRAPH COMPANY
vs.
THE ANN ARBOR RAILROAD COMPANY

and

THE ANN ARBOR RAILROAD COMPANY
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

Bill and Cross-bill. No. 1198.

These causes coming on for hearing by consent of counsel for the respective parties, upon pleadings and a stipulation of facts, were duly argued by C. A. Kent, Esq., of counsel for said Western Union Telegraph Company, and A. L. Smith, of counsel for said Ann Arbor Railroad Company, and thereupon the court took the same under advisement.

Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE WESTERN UNION TELEGRAPH COMPANY
vs.
THE ANN ARBOR RAILROAD COMPANY.

In this case I reach the following conclusions:

1. That the contract entered into on the 25th day of September, 1890, between the Frankfort & Southeastern Railroad Company and the complainant, The Western Union Telegraph Company, was, in all respects except in so far as it purports to create an easement in the real estate in the nature of a right of way, a contract personal to the Frankfort & South Eastern Railroad Company.

2. That the burden of that contract, which had rested upon the Frankfort & South Eastern Railroad Company, did not pass
36 to and become a charge upon the defendant in this case upon its purchase under the foreclosure of the mortgage or mortgages upon the Frankfort & South Eastern Railroad Company's lands and property; unless by some further agreement, express or implied, between the defendant, The Ann Arbor Railroad Company, and the telegraph company, the stipulations of the contract should be continued as between them.

3. The defendant railroad company might by its conduct in reference to the telegraph company's lines and property, raise such an implication of its assent to such a contract as would establish ground for conclusively imputing to the railroad company such an adoption of the contract as its own.

4. There is no evidence in this case which would justify the conclusion that the Ann Arbor Railroad Company either did adopt, or ought in equity to be held to have adopted the contract as its own. Its conduct in so far as it might be regarded as in joint occupation with the telegraph company of the lines and property has not been voluntary, but has been in obedience to the mandate of this court; and there would be no justice in using such acts, done in obedience to the court, as a voluntary acquiescence in the contract which the Ann Arbor Railroad Company appears to have repudiated from the company's own organization, or rather, from the beginning of its dealing with the matter in controversy.

5. In respect of the right of way, a supposed easement affecting the real estate, and which it is claimed created rights outlasting the continuance of the personal covenants in the contract, my opinion is that the right to the easement ceased with the continuance of the personal covenants; that it was necessarily incident to the personal covenants, but it has no foundation upon which it could last independently of the personal covenants. And further, this being so, I think that it should be held that the parties in the making of the original contract, knowing as they must be presumed to know, that this would be the natural consequence, must be held to have intended that the easement should not continue for the term stated unless the principal things contemplated by the contract should

continue to endure, and require in order to give them effect that the easement should also continue, which is not the case. No foreclosure is necessary. The easement has ceased.

6. The telegraph company has the right to remove the personal property which by the terms of the contract were to inure to and belong to it, and it has, under the circumstances attending
37 the entry of the present railroad company upon the lands and property of the Frankfort & South Eastern Railroad Company, an implied license to enter upon the property and remove the same.

7. The bill should be retained only for the purpose of an accounting upon the transactions between the parties during the pendance of the suit, if there is occasion for such accounting; and upon the adjustment of the accounts, if there are any to be adjusted, there should be an order for the payment of any balance, and thereupon for a dismissal of the bill. If there is no occasion for any accounting let there be an order for the dismissal of the bill.

8. The proceedings on the part of the railroad company in reference to the property in question were sufficient to move the court to an exercise of its discretion in respect of the matter of costs, and the order in that regard will be that neither party recover costs.

H. F. SEVERENS,
U. S. District Judge.

No. 1198. Circuit court of the United States, western district of Michigan, southern division. In equity. The Western Union Telegraph Co. *vs.* The Ann Arbor Railroad Company. Opinion of the court. Filed March 18, 1897. Chas. L. Fitch, clerk.

March Term, A. D. 1897.

TUESDAY, *May* 4, 1897.

The court met pursuant to adjournment.

Present: The Honorable Henry F. Severens, district judge.

THE WESTERN UNION TELEGRAPH COMPANY, Complainant,
vs.
THE ANN ARBOR RAILROAD COMPANY, Defendant,

and

THE ANN ARBOR RAILROAD COMPANY, Complainant,
vs.
THE WESTERN UNION TELEGRAPH COMPANY, Defendant.

} Bill and Cross-bill. No. 1198.

38 This day came the complainant, The Western Union Telegraph Company, by C. A. Kent, its solicitor, also came the defendant, The Ann Arbor Railroad Company, by Alexander L.

Smith, its solicitor, and thereupon this cause came on for trial and was submitted to the court upon the bill of complaint, the answer of the defendant, the replication of the complainant, and the cross-bill herein filed by the defendant, together with a stipulation as to the facts herein agreed upon and filed by the parties and was argued by counsel. Upon consideration whereof the court finds that the equity of said case is with the defendant, The Ann Arbor Railroad Company; that the contract of September 25, 1890, between the Frankfort and Southeastern Railroad Company, and the complainant, The Western Union Telegraph Company, is not binding upon the defendant, The Ann Arbor Railroad Company, and that the easement upon the property of the defendant, The Ann Arbor Railroad Company, claimed by the said complainant under the provisions of said contract has ceased.

The court further finds that said complainant has the right to enter upon the property and right of way of the defendant company for the purpose of removing the personal property which by the terms of said contract was to enure to and belong to said complainant company, but for no other purpose.

And it further appearing to the court that there is no necessity for retaining said bill for the purpose of an accounting upon the transactions between the parties during the pendency of this suit, it is ordered, adjudged and decreed that said bill be and the same is hereby dismissed; and it further appearing to the court that said cross-bill is not necessary, it is ordered that the same be and it is hereby dismissed.

And for good cause shown it is ordered that neither party recover the costs herein.

In the Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE WESTERN UNION TELEGRAPH COMPANY
vs.
THE ANN ARBOR RAILROAD COMPANY.

Said complainant, the said Western Union Telegraph Com-
39 pany, hereby claims an appeal from the decree of the court in this cause to the court of appeals of the 6th circuit and asks that it be allowed by the court.

C. A. KENT,
Sol. and of Counsel for Compl't.

No. 1198. In the circuit court of the United States for the western district of Michigan, southern division. The Western Union Telegraph Co. *v.* The Ann Arbor Railroad Co. Claim of appeal. I here allow the within claim of appeal. H. F. Severens, dist. judge. May 18th, 1897. Filed May 18, 1897. Chas. L. Fitch, clerk. C. A. Kent, sol. and of counsel for compl't.

In the Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE WESTERN UNION TELEGRAPH COMPANY
vs.
THE ANN ARBOR RAILROAD COMPANY.

Assignment of Errors.

The said complainant assigns as error the decree in this cause, that it is for the dismissal of the bill, whereas the decree should have been for complainant in accordance with the prayer of the bill. Complainant asks that the decree be reversed and a decree entered for complainant in accordance with such prayer.

C. A. KENT,
Sol. and of Counsel for Compl't.

No. 1198. The circuit court for the United States for the western district of Michigan, southern division. In equity. The Western Union Telegraph Company *v.* The Ann Arbor Railroad Company. Assignment of errors. Filed May 18, 1897. Chas. L. Fitch, clerk. C. A. Kent, sol. and of counsel for compl't.

Know all men by these presents, that we, The Western Union Telegraph Company, a corporation organized under the laws of New York, as principal, and Cornelius Corbett and Michael
40 S. Corbett, of Detroit, Michigan, as sureties, are held and firmly bound unto the Ann Arbor Railroad Company, a corporation organized under the laws of Michigan in the full and just sum of two thousand dollars ($2,000.00), to be paid to the said Ann Arbor Railroad Company, its certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 10th day of May, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas, lately at a session of the circuit court of the United States for the western district of Michigan, southern division, in chancery, in a suit depending in said court, between said Western Union Telegraph Company and said Ann Arbor Railroad Company a decree was rendered against the said Western Union Telegraph Company and the said Western Union having obtained an allowance of a claim of appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Ann Arbor R. R. Co., citing and admonishing it to be and appear at a session of the United States circuit court of appeals for the sixth circuit, to be holden at the city of Cincinnati, in said circuit, on the — day of —— next:

Now, the condition of the above obligation is such, that if the said Western Union Telegraph Company shall prosecute its appeals to effect, and answer all damages and costs if it fail to make its

plea good, then the above obligation to be void; else to remain in full force and virtue.

[Seal of the Western Union Telegraph Co.]

WESTERN UNION TELEGRAPH
COMPANY, [SEAL.]
By THOS. T. ECKERT,
President. [SEAL.]
CORNELIUS CORBETT. [SEAL.]
MICHAEL S. CORBETT. [SEAL.]

A. R. BREWER, *Secretary.*

Seal and delivered in the presence of—
—— ——.

Approved by—
H. F. SEVERENS,
U. S. Dist. Judge.

STATE OF NEW YORK, } ss:
County of New York, }

On this 10th day of May, A. D. 1897, before me personally appeared Thomas T. Eckert, president of the Western Union Telegraph Company, to me known, who, being by me duly sworn, did depose and say that he resides in the city, county and State of New York; that he knows the corporate seal of the Western
41 Union Telegraph Company; that the seal affixed to the foregoing instrument is the corporate seal of said company, and was so affixed by order of the executive committee of its board of directors, and that by like order he signed the same as president. And on the same day and year before me personally appeared Abijah R. Brewer, secretary of the said company, to me known, who, being duly sworn, did depose and say that he resides in the borough of Glen Ridge, county of Essex and State of New Jersey; that he knows the corporate seal of the Western Union Telegraph Company; that the seal affixed to the foregoing instrument is the corporate seal of said company, and was so affixed by order of the executive committee of its board of directors, and that by like order he attested the same as secretary.

[NOTARIAL SEAL.]

WM. ARNOUX,
Notary Public, New York County.

No. 1198. The Western Union Tel. Co. *v.* The Ann Arbor Railroad Co. Bond on writ of error or appeal to the United States circuit court of appeals for the sixth circuit. Filed May 18, 1897. Chas. L. Fitch, clerk.

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } *ss:*

To the Ann Arbor Railroad Company, a corporation under the laws of Michigan, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States circuit court of appeals for the sixth circuit, to be holden at the city of Cincinnati, in said circuit, on the* 10th day of June next, pursuant to an order allowing an appeal filed in the clerk's office of the circuit court of the United States for the western district of Michigan, southern division, in equity, wherein The Western Union Telegraph Company, a corporation, is complainant and appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appellant's assignment of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 18th day of May, in the year of our Lord
42 one thousand eight hundred and ninety-seven, and of the Independence of the United States of America the one hundred and twenty-first.

HENRY F. SEVERENS,
U. S. Dist. Judge.

I hereby accept service of the within.

ALEXANDER L. SMITH,
Sol. for the Ann Arbor Railroad Company.

Toledo, May 20, 1897.

No. 1198. The circuit court of the United States for the western district of Michigan, southern division. In equity. The Western Union Telegraph Co., complainant and appellant, *vs.* The Aann Arbor Railroad Co. Citation. Filed May 22, 1897. Chas. L. Fitch, clerk.

THE UNITED STATES OF AMERICA, *Western District of Michigan, Southern Division,* } *ss:*

I, Charles L. Fitch, clerk of the circuit court of the United States for the western district of Michigan, do hereby certify that the annexed and foregoing are true and compared copies of the transcript from State court, answer, motion to dissolve injunction, replication, stipulation contending to filing of cross-bill, cross-bill, stipulation as to facts, opinion of the court, and bond on appeal filed, and of the order granting leave to file cross-bill, the record of final hearing, and decree entered in the within-entitled cause, and of all the proceedings in said cause so far as the same appear of record in my

* Not exceeding 30 days from the day of signing.

office and of the whole thereof, together with the original claim of appeal and order allowing appeal, assignments of error and citation in said cause.

Witness my official signature and the seal of said court at the city of Grand Rapids in said district and division this 27th day of May in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States of America the one hundred and twenty-first.

[SEAL.] CHARLES L. FITCH, *Clerk.*

43 On June 1st, 1897, the following appearance was filed, which reads as follows:

United States Circuit Court of Appeals for the Sixth Circuit, October Term, 1896.

WESTERN UNION TELEGRAPH CO. *v.* ANN ARBOR RAILROAD CO. } No. 524.

To the clerk of said court:

Please enter my appearance as counsel for the appellant.

C. A. KENT,
Sol. & of Counsel for Western Union Tel. Co.

And on December 13th, 1897, an entry was made upon the journal of said court, which is in the words and figures following:

United States Circuit Court of Appeals for the Sixth Circuit.

WESTERN UNION TEL. CO. *v.* ANN ARBOR R. R. CO. } Appeal from the Circuit Court of the United States for the Western District of Michigan. Before Taft, Lurton, and Clark, JJ.

This cause came on this day to be heard, and was argued by Mr. Rush Taggart and Mr. C. A. Kent for the appellant, and by
44 Mr. Alexander L. Smith for the appellee, and was submitted to the court for decree.

And on November 9th, 1898, an opinion was rendered in said cause in said court, which reads and is as follows:

Opinion.

45 United States Circuit Court of Appeals, Sixth Circuit.

THE WESTERN UNION TELEGRAPH COMPANY, Appellant, *vs.* THE ANN ARBOR RAILROAD COMPANY, Appellee.	No. 524. Appeal from the Circuit Court of the United States for the Western District of Michigan.

Submitted Dec. 13, 1897; decided Nov. 9, 1898.

Taft and Lurton, circuit judges, and Clark, district judge.

This was a bill in equity by the Western Union Telegraph Company:

1st. To restrain the defendant, The Ann Arbor Railroad Company from interfering with the telegraph wires and poles of the complainant, running from Thompsonville to Frankfort, on the line of the defendant's railroad.

2d. To compel the defendant to allow the complainant to reconnect the wires to the complainant's main line on the Chicago & Western Michigan railroad and to use the wires for its telegraph business as they were used before they were disconnected by the defendant; and,

3d. To require the defendant to carry out the contract under which said poles and wires were erected made by the Western Union Telegraph Company with the Frankfort & Southeastern Railroad Company, a former owner of this part of defendant's line of railway.

The complainant relies in its bill, not only upon the contract made with the Frankfort & Southeastern Railroad Company as binding upon the defendant, but also upon the provisions of the act of Congress passed July 24, 1866, the provisions of which the complainant company accepted and which the bill avers confers a right upon the complainant to maintain its telegraph line on the railroad as a post-road of the United States.

46 The defendant answered setting forth the circumstances under which it acquired title and after replication the case was heard on the following agreed statement of facts:

That on March 1, 1889, the said The Frankfort & Southeastern Railroad Company, executed a mortgage upon all its property and assets of every kind and description, whether then owned or thereafter to be acquired by said company, to Henry Day and Albert C. Hall as trustees, which mortgage was thereupon, to wit, on the 11th day of May, 1889, duly recorded in the counties through which the road passed; that the road was sold by the mortgagor to the Toledo, Ann Arbor & North Michigan Railway Co.; that subsequent mortgages were issued by the grantee company, and there was a default upon all the mortgages, including the one first above mentioned and foreclosure proceedings were begun upon all of them; that the

railroad here in question was sold at foreclosure sale under the mortgage of March 1, 1889, to the trustees under said mortgage, from whom, by mesne conveyance the title was transferred to the defendant, The Ann Arbor Railroad Company; that the complainant was not a party to these foreclosure suits; that the contract between the complainant and the Frankfort & Southeastern Railway Company was entered into on the 25th day of September, 1890, more than a year after the execution of the mortgage to Day and Hall, trustees; that Day and Hall, trustees, knew of the contract and complainant's claim of right under it before foreclosure; that the Ann Arbor Railroad Company was delivered possession of the railroad by the order of the court in the foreclosure proceedings and that after notice to the complainant, it declined to recognize any obligation upon it, arising from complainant's contract with the Frankfort & Southeastern Railroad Company, and disconnected the wires as averred in the bill.

By complainant's contract with the Frankfort & Southeastern Railroad Company, the latter agreed to furnish and distribute for the telegraph company, free of cost, along the line of the railroad, cedar poles, thirty to a mile, to furnish all the labor to dig the holes in which to set the poles, to place the wires and insulators thereon, under the direction of a foreman of the telegraph company, to maintain the poles and wires at its own expense in good order and repair, and to reconstruct them when required by the telegraph company. The telegraph company agreed to furnish the wires and insulators for the entire line and the necessary batteries; the railroad company agreed to furnish, free of charge, in its station-
47 houses, suitable space for batteries. The telegraph company agreed to set apart the first wire erected along said railroad for the joint use of the parties to the contract for the transmission of railroad and commercial telegraph business. By the fourth section it was agreed that either party might establish telegraph stations at such places as it might deem necessary; that the telegraph company should furnish the instruments; that the railroad company should furnish the operators, and all messages pertaining to the railroad business should be transmitted free. The railroad company agreed to transport, free of charge, all officers and employés and all material for the use of the telegraph company, and if the telegraph company elected to establish an independent office at a station of the railroad company, the railroad company agreed to furnish office room, light and fuel, free of charge in such station. The eighth section was as follows:

"Eighth. The railroad company, so far as it legally may, hereby grants and agrees to assure to the telegraph company, the exclusive right of way on, along and under the line, lands and bridges of the railroad company, and any extensions and branches thereof, for the construction, maintenance, operation and use of lines of poles and wires and underground or other lines for commercial or public uses or business, with the right to put up or construct or cause to be put up or constructed, from time to time, such additional lines of poles and wires and underground or other lines as the telegraph company

may deem expedient, and the railroad company agrees to clear, and keep clear, said right of way of all trees, undergrowth and other obstructions to the construction and maintenance of the lines and wires provided for herein, and the railroad company will not transport men or material for the construction, maintenance or operation of a line of poles and wire or wires or underground or other lines in competition with the lines of the telegraph company, party hereto, except at and for the railroad company's regular local rates, nor will it furnish for any competing lines any facilities or assistance that it may lawfully withhold, nor stop its trains, nor distribute material therefor at other than regular stations.

Provided always that in protecting and defending the exclusive grants conveyed by this contract, the telegraph company may use and proceed in the name of the railroad company, but shall indemnify and save harmless the railroad company from any and all damages, costs, charges and legal expenses incurred therein or thereby."

By the eleventh section it was "mutually understood and
48 agreed that the telegraph line, poles, wires and fixtures covered by the contract shall be the property of the telegraph company and shall form part of its general telegraph system, and shall be controlled and regulated by the telegraph company, which shall fix and determine all tariffs for the transmission of messages and all connections with other lines and interests." By the twelfth section the provisions of the agreement were extended to all railroads then owned, leased, controlled or operated by the Frankfort & Southeastern Company and to all railroads thereafter owned, leased, controlled or operated by that company or by any company or corporation, in which that company might own a majority of the stock, or whose action it might be able to control by ownership of stock or otherwise. The provisions of the contract, it was stipulated should be and continue in force for and during the term of twenty-five years from the 25th day of September, 1890, and should continue after the close of the term until the expiration of one year after written notice should have been given after the close of the term by either party to the other of an intention to terminate the same.

The circuit court held that the contract was in all respects, except in so far as it purported to create an easement in the real estate in the nature of a right of way, a contract personal to the Frankfort & Southeastern Railroad Company; that the burden of that contract did not pass to and become a charge upon the defendant in this case upon its purchase under the foreclosure of the mortgage or mortgages upon the Frankfort & Southeastern Railroad Company's lands and property, unless by some conduct the Ann Arbor railroad could be held to have adopted the contract as its own, and that no such conduct was proven in the case; that in respect of the right of way, a supposed easement affecting the real estate, and which it was claimed, created rights outlasting the continuance of the personal covenants in the contract, the right to the easement ceased with the continuance of the personal covenants and had no foundation upon which it could last independently of the personal covenants; and

further that this being so, the parties in the making of the original contract, knowing as they must be presumed to know, that this would be the natural consequence, must be held to have intended that the easement should not continue for the term stated unless the principal things contemplated by the contract should continue to endure, and require in order to give them effect that the easement should also continue; that no foreclosure was necessary; that the easement had ceased; that the telegraph company had the right to remove the personal property, which, by the terms
49 of the contract, were to inure to and belong to it, and that it had under the circumstances attending the entry of the present railroad company upon the lands and property of the Frankfort & Southeastern Railroad Company, an implied license to enter upon the property and remove the same. The bill of the complainant was accordingly dismissed.

TAFT, circuit judge, delivered the opinion of the court:

Had the mortgage of the Frankfort & Southeastern Railroad Company the character and incidents of a mortgage at common law, it cannot be doubted that by the entry upon the premises of the assignees of the mortgages, all rights of the telegraph company under its contract would have ceased, and its attempt to continue the enjoyment of the easement said to have been created thereby would have been nothing but a trespass. In England at the common law, title and right of possession passed to the mortgagee at once upon the execution of the mortgage and if the mortgagor remained in possession, he was not more than a tenant at will. He could not bind the mortgagee by any contract or grant with reference to the land mortgaged, and any one entering by his license, lease or grant was as to the mortgagee only a trespasser whom the latter might enter upon and oust, or against whom he might bring ejectment without notice to quit. In Keech *v.* Hall, 1 Dougl., 21, a mortgagor in possession had, after the mortgage, made a lease in writing for seven years. The mortgagee brought ejectment against the lessee of the mortgagor without giving him notice to quit and had judgment. Lord Mansfield said:

"When the mortgagor is left in possession, the true inference to be drawn is an agreement that he shall possess the premises at will in the strictest sense, and therefore no notice is ever given him to quit, and he is not entitled to reap the crop as other tenants at will are, because all is liable to the debt, on payment of which the mortgagor's title ceases. The mortgagor has no power, express or implied, to let leases not subject to every circumstance of the mortgage."

The law, even of those States of this country where no change has been made by statute, is more liberal to the mortgagor. Until condition broken, though the title passes to the mortgagee, he holds it merely as security, and not until after a breach has he the right to enter upon the mortgagor or to maintain ejectment against him. The mortgagor has a right to lease, sell and in every respect
50 to deal with the mortgaged premises as owner so long as he is permitted to remain in possession, and so long as it is

understood and held that every person taking under him takes subject to all the rights of the mortgagee, unimpaired and unaffected. 4 Kent's Com., 157. It is, however, well settled that no contract of lease or otherwise, which the mortgagor may make with respect to the land, either enures to the benefit of the mortgagee or is binding on him. There is in such case no privity of either estate or contract between the mortgagee and the lessee of the mortgagor to bind either, and the entry of the mortgagee into possession under the mortgage merely avoids the lease, and releases the lessee from any obligation. Moran *v.* Pittsburg, Cincinnati & St. Louis Railroad Company, 32 Fed. Rep., 878, 886; Teal *v.* Walker, 111 U. S., 242, 248. Under this general doctrine, it cannot be doubted that in the case at bar, the entry of the mortgagee or his grantee into possession would have avoided all the telegraph company's rights, and that its alleged easement granted for twenty-five years would be at an end. The grantee of an easement for twenty-five years certainly stands upon no higher ground than a lessee for such a term. Indeed, his position is not so good in this case. A lessee has possession of all the land mortgaged, and may, perhaps, be said to have acquired *pro tanto* the equity of redemption and an estate in the land. The holder of this easement, which can only be enjoyed in connection with certain personal covenants certainly not binding on the mortgagee, has no possession of the land mortgaged in any proper sense, but merely a right *in alieno solo* against the mortgagor. If, therefore, an entry of the mortgagee upon the lessee would avoid his interest in the land, *a fortiori* would it end the interest of one who holds from the mortgagor nothing but a naked right in the nature of an easement in gross and incapable of enjoyment, except upon terms in nowise binding upon the mortgagee.

The question which remains for our consideration is whether in Michigan, where this railroad lies, the character of a mortgage differs so widely from that of mortgages in other States, that the result of the law of mortgages in other States would not obtain there. It is provided by statute in Michigan (Howell Ann. St., sec. 7847), that no action of ejectment shall hereafter be maintained by a mortgagee or his assigns or representatives for the recovery of the mortgaged premises until the title thereto shall have become absolute upon a foreclosure of the mortgage." The effect of this statute is merely to take away the remedy of the mortgagee by entry or ejectment, but it does not in any way affect his rights against those claiming an interest in the premises under the mortgagor. The rule that the mortgagor cannot bind the mortgagee by lease or other contract is not changed thereby. When the mortgagee acquires possession of the mortgaged land by foreclosure sale, the effect of his possession upon those claiming under the mortgagor is just as complete to avoid their rights and interest as was entry or ejectment at common law. Nor does it prevent this result, that the holder of the easement may not have been made a party to the foreclosure suit. The easement was granted subject to being divested by the mortgagee's acquiring possession of the mortgaged premises. That event has happened and the divesting fol-

51

lows. Of course, if the telegraph company had been made a party to the foreclosure, the decree would have settled the rights of the purchaser as against the telegraph company as *res judicata*, and would have conclusively established that the company had no interest in the land after sale. As the company was not a party to the decree, however, the divestiture of its right must be shown by proof of the execution of the mortgage prior to the contract for the easement and the entry into possession by the mortgagee or his assignee under foreclosure and sale. We have found no Michigan authority in point upon this question, but in other States having statutes like the one from Michigan, above quoted, the conclusion we have reached is well sustained by adjudicated cases.

In Iowa, by statute, the mortgagor retains the legal title and the right of possession until foreclosure and sale. Code of Iowa, 1873, p. 357; Jones on Mortgages, sec. 29. In Downard *v.* Groff, 40 Iowa, 597, A. sued G. a covenant of general warranty. G. was the assignee of a mortgage, and at foreclosure bought in the property and sold with warranty to A. The breach assigned was that D., the mortgagor, after the execution of the mortgage, had leased the land to one L., and that L., who had not been made a party to the foreclosure proceeding, had refused to yield possession, and had taken the crops growing at the time of the sale. It was held that no breach was shown, because the purchaser had the right to evict L., and to take the emblements. The court said:

"It may be conceded that since Leroy, the tenant, was in possession under a lease from the mortgagor, and was not made a party to the foreclosure suit, that he is not bound or affected by the judgment therein. But this fact does not alter the rights of the
52 mortgagee, or of the purchaser under the foreclosure sale, as against such tenant. It only affects the remedy and defeats the use of the judgment as evidence. By the lease from Dorstal, the mortgagor, to Leroy, the latter acquired no greater rights in the premises than the mortgagor had. The tenant stands exactly in the situation of the mortgagor. As between the mortgagor and mortgagee, the latter, by the foreclosure and sale, became entitled to the possession of the premises, and to all the crops then growing thereon. This right of the purchaser was not and could not be defeated by reason of the lease, or by the fact that the possession was in, or that the crops were grown by, the lessee. The right to the possession, and the right to the growing crops passed to the purchaser. If the tenant had been made a party to the foreclosure suit, the possession and the crops could have been delivered to him by process under that judgment; but since he was not made a party thereto, he cannot obtain that remedy except by some other action. The purchaser's rights, however, are just the same as they would have been if the tenant had been made a party. It follows, therefore, that Groff, by his purchase and sheriff's deed, became the absolute owner of the premises, including the crops growing thereon; and by his conveyance he invested the plaintiff herein with that ownership, and she might, by proper action, have enforced her

rights as such owner against the tenant. Her failure to do so cannot give her any cause of action against the defendant, her grantor."

In California the title and right of possession of the mortgagor continues until foreclosure and sale. McMillan *v.* Richards, 9 Cal., 365; 1 Jones on Mortgages, sec. 20. In McDermott *v.* Burke, 16 Cal., 580, the action was ejectment by the purchaser at a mortgage foreclosure sale against the lessees under a term of five years granted by the mortgagor after the execution of the mortgage. The lessees had not been made parties to the foreclosure suit.

Chief Justice Field, who had delivered the opinion in McMillan *v.* Richards, *supra*, also delivered the judgment of the court in this case. He said:

"We are of opinion that the legal rights of the lessee were extinguished by the proceedings in the foreclosure suit and sale following the decree thereon. A mortgagor cannot make a lease which will bind his mortgagee, where the lessee at the time had notice of the mortgage, either actual or constructive. The interest of the lessee in such case is dependent for its duration, except as limited by the terms of the lease, upon the enforcement of the mortgage. So long as the mortgage remains unen-
53 forced the lease is valid against the mortgagor, and in this State against the mortgagee; but with its enforcement the leasehold interest is determined. There is no privity of contract or of estate between the purchaser upon the decree of sale and the tenant. The purchaser may, therefore, treat the tenant as an occupant without right, and maintain ejectment for the premises. He cannot, for the want of such privity, count upon the lease, and sue for the rent or the value of the use and occupation. The relation between the purchaser and tenant is that of owner and trespasser until some agreement, express or implied, is made between them with reference to the occupation. Until then, both are equally free from any contract obligations to each other. The tenant is not bound to attorn to the purchaser, nor is the latter bound to accept the attornment, if offered. The purchaser may prefer to have the possession, and the tenant may also prefer to surrender it. * * * The error of the plaintiff arises from the misapprehension of the rule as to the parties necessary to the foreclosure of a mortgage. The rule only requires, as parties, those who are beneficially interested in the claim secured or in the estate mortgaged. The tenant is not thus interested in the claim; he is not entitled to its proceeds when collected, or to any portion of the proceeds. Nor is he thus interested in the estate mortgaged—that is, in the title which is pledged as security. He has not succeeded to such estate, or to any portion of such estate. He does not stand, therefore, in the position of a purchaser. The estate remains in his lessor; he has only a contingent right to enjoy the premises. The right of the lessor to the possession ends with the sale of the premises, or, rather, with the deed by which the sale is consummated. The right of the tenant to such possession depends upon that of the lessor and goes with it."

In New York no action of ejectment can be sustained by a mort-

gagee for the recovery of the mortgaged premises, and the mortgagor has a right to sell or lease subject to the rights of the mortgagee. In Simers *v.* Saltus, 3 Denio, 214, the suit was by the mortgagor on a covenant of a lease for rent. The defense was eviction. The facts were that the lessor, being the owner in fee of the land, had given a mortgage upon the same before he made the lease upon which suit was brought, and that the mortgagee had foreclosed the property and brought it to a sale; that the purchaser had said to the tenant that he might continue to occupy the land, and the contention was that by such consent, the lessee continued bound
54 under the lease. The court held, however, that by the foreclosure and sale, the lease of the tenant had been extinguished. The court said:

"If the mortgagor, subsequent to the mortgage, lease the premises, the mortgagee cannot distrain or sue for the rent, because there is no privity of contract or of estate, between the mortgagee and tenant, unless the tenant attorn to the mortgagee after the mortgage has become forfeited, which he may do. * * * After foreclosure and sale of the mortgaged premises, in possession of a lessee of a mortgagor, under a lease subsequent to the mortgage, the lessee is considered a wrongdoer, and is not entitled to notice to quit; and against him an action of trespass will lie by the purchaser for taking and carrying away the crops. Lane *v.* King, 8 Wend., 584."

The same principle is laid down in Indiana, a State which has the same statutory provisions in respect to the remedies of the mortgagee as Michigan. Jones *v.* Thomas, 8 Blackford, 423. It is true that in Lockhart *v.* Ward, 45 Texas, 227, it was held by a majority of the court, the chief justice dissenting, that ejectment would not lie in favor of a mortgagee purchasing at the foreclosure sale against the lessee of a mortgagor, who had not been made a party to the foreclosure proceedings, but the weight of authority is to the contrary, as we have seen. A tenant for years under a mortgagor, when evicted by the mortgagee before or after foreclosure, may redeem the mortgage. Averill *v.* Taylor, 8 N. Y., 44; Bacon *v.* Bowdoin, 22 Pick., 401; and it is possible that the grantee of such an easement as this one claimed at the bar might be accorded the same privilege; but however that may be, in the absence of redemption the right to enjoy the easement ended with the entry of the purchaser at foreclosure sale. The complainant company had no right to object, therefore, when the purchaser refused to permit it to enjoy the easement longer and disconnected the wires, and the prayer for an injunction against such acts was rightly denied. The defendant railroad company conceded all that was claimed by the complainant in respect to the personal property and fixtures under clause 11 of the contract, and no controversy arises thereon.

It is contended farther that the telegraph company may continue to maintain a telegraph line over defendant's railroad without its consent by virtue of the act of Congress passed July 24, 1866 (Rev. St., 5263, 5268, 5269). By this act it is provided that any telegraph

company organized under the laws of any State shall have
55 the right to construct, maintain and operate lines of telegraph over and along any of the post-roads of the United States, after filing a written acceptance of the obligations and restrictions of the act. By section 3964, Rev. St., passed in 1872, all railroad- or parts of railroads in the United States are established as post-roads. In Pensacola Tel. Co. *v.* Western Union Telegraph Company, 96 U. S., 111, it was held that the purpose of this legislation was to secure the convenient transmission of intelligence by telegraph in the United States from State to State without State interference, and that it was a legitimate regulation of interstate commerce by Congress. Speaking of the act the court said:

"It gives no foreign corporation the right to enter upon private property without the consent of the owner, and erect the necessary structures for its business; but it does provide that whenever the consent of the owner is obtained, no State legislation shall prevent the occupation of post-roads for telegraph purposes by such corporations as are willing to avail themselves of its privileges." Again, the court said: "No question arises as to the authority of Congress to provide for the appropriation of private property to the uses of the telegraph, for no such attempt has been made. * * * If private property is required, it must, so far as the present legislation is concerned, be obtained by private arrangement with its owner. No compulsory proceedings are authorized."

The authority establishes, if authority were needed, that the telegraph company cannot occupy the line of defendant's railroad without the consent of defendant or the consent of some predecessor in title, which is binding on the defendant. This, we have seen, is wanting. The suggestion, however, seems to be, if we understand it, that because of the public necessities, the court ought to use its injunction process and shape its decree so as to effect an equitable condemnation of the easement of way. The court has no such power.

The decree of the circuit court is affirmed with costs.

56 And on the same day, to wit, on November 9th, 1898, a decree was entered in said cause, which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

WESTERN UNION TEL. CO. *v.* ANN ARBOR R. R. CO.	}	Appeal from the Circuit Court of the United States for the Western District of Michigan.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the western district of Michigan, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

57 United States Circuit Court of Appeals for the Sixth Circuit.

THE WESTERN UNION TELEGRAPH Company, Appellant, *vs.* THE ANN ARBOR RAILROAD COMPANY, Appellee.	Assignments of Error and Prayer for Appeal.

Now comes The Western Union Telegraph Company, appellant, and says there is error in the record and proceedings in the above-entitled matter, in this, to wit:

First. The said circuit court of appeals erred in affirming the judgment of the circuit court rendered against The Western Union Telegraph Company, appellant, and in favor of The Ann Arbor Railroad Company, appellee, upon the trial of said cause.

Second. That the said circuit court of appeals erred in holding that the interest of the said appellant under the contract entered into on the 25th day of September, 1890, with the Frankfort & Southern Railroad Company was terminated by the foreclosure of the mortgage given to Henry Day and Albert C. Hall, as trustees, and that the appellant had no further rights along and upon the said railway.

Third. That the said circuit court of appeals erred in hold- that it had no power to ascertain the compensation, if any, due from the appellant to the appellee for the easement along and upon the right of way of the appellee's railroad.

58 Fourth. That the said circuit court of appeals erred in affirming the judgment of the circuit court to the effect that the rights of the appellant under the said contract were purely personal, and that no foreclosure of its rights obtained under the said contract was necessary, and that its easement ceased by virtue of the foreclosure of the mortgage.

Wherefore the Western Union Telegraph Company prays that its appeal to the Supreme Court of the United States may be allowed; that the decree rendered herein against it may be set aside and reversed, and that a decree in its favor as prayed for in its original bill filed in said cause may be entered.

RUSH TAGGART,
Attorney for Appellant, No. 195 *Broadway, New York City, N. Y.*

Appeal allowed.
JOHN M. HARLAN,
Associate Justice, Supreme Court of the United States.

January 7th, 1899.

59 Know all men by these presents that we, The Western Union Telegraph Company, as principal, and George J. Gould and James Merrihew, as sureties, are held and firmly bound unto The Ann Arbor Railroad Company in the full and just sum of five thousand dollars *dollars*, to be paid to the said Ann Arbor

Railroad Company, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 29th day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a term of the United States circuit court in and for the western district of Michigan, southern division, in a suit depending in said court between The Western Union Telegraph Company, complainant, and The Ann Arbor Railroad Company, defendant, a decree was rendered against the said The Western Union Telegraph Company, and the said Western Union Telegraph Company having appealed to the United States circuit court of appeals for the sixth circuit, and the said court having, on the 9th day of November, 1898, affirmed said decree with costs, and The Western Union Telegraph Company having obtained an allowance of appeal from the Supreme Court of the United States and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said The Ann Arbor Railroad Company, citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said The Western Union Telegraph Company shall prosecute its appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE WESTERN UNION TELEGRAPH COMPANY,
By THOS. T. ECKERT, *President.* [SEAL.]
GEO. J. GOULD. [SEAL.]
JAMES MERRIHEW. [SEAL.]

Sealed and delivered in presence of—
GEO. H. FEARONS.
GEO. H. FEARONS.
GEO. H. FEARONS.

Approved and to act as a supersedeas by—
(Signed) JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

January 7th, 1899.

60 UNITED STATES OF AMERICA, ss:

To the Ann Arbor Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the United States circuit court of appeals

for the sixth circuit, wherein The Western Union Telegraph Company is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John M. Harlan, associate justice of the Supreme Court of the United States, this seventh day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

61 The Ann Arbor Railroad Company hereby accepts service of the within citation this 18th day of January, A. D. 1899.

THE ANN ARBOR RAILROAD COMPANY,
By ALEXANDER L. SMITH, *Its Solicitor.*

62 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the record and the original citation in the case of The Western Union Telegraph Co. *vs.* The Ann Arbor Railroad Co., No. 524, October term, 1898, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit, and of the whole thereof.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the sixth circuit, at the city of Cincinnati, Ohio, this nineteenth day of January, 1899.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

Endorsed on cover: File No., 17,287. U. S. C. C. of appeals, 6th circuit. Term No., 202. The Western Union Telegraph Company, appellant, *vs.* The Ann Arbor Railroad Company. Filed January 31, 1899.